

DECISION



19887 *Martin*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205087

DATE: October 29, 1981

MATTER OF: Valiant Security Agency

DIGEST:

Agency did not act improperly in rejecting low bid from concern owned by employee of Federal Government because, while such contracts are not expressly prohibited by statute, except in certain situations not present here, they are undesirable and should not be authorized except where Government cannot otherwise be reasonably supplied. Fact that service would be more expensive from other sources provides no support for determination that service cannot be reasonably obtained except from concern owned by employee of the Government.

Valiant Security Agency, through its owner, Lawrence W. Bartolo, protests rejection of its low bid for security services under invitation for bids No. 82-01-09-11-81 issued by the National Institute for Occupational Safety and Health, Department of Health & Human Services. The bid was rejected because Mr. Bartolo has been employed by the Federal Government since 1968, and the contracting officer relied on Federal Procurement Regulations (FPR) § 1-1.302-3 (1964 ed. amend. 95) which provides as follows:

"(a) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

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"(b) When a contracting officer has reason to believe that an exception as described in paragraph (a) of this section, should be made, approval of the decision to make such an exception shall be handled in accordance with agency procedures and shall be obtained prior to entering into any such contract."

Valiant contends it has a proven performance record extending back to 1972 and the agency which employs Mr. Bartolo has awarded a contract to Valiant when no other bids were received. Valiant asserts it was not reasonable for the agency to award a contract to the awardee at a price \$20,456 higher than the bid of Valiant and such a savings by itself should have compelled the contracting officer to make an award to Valiant.

We believe the issue presented may be decided on the basis of the protester's submission without further development under our Bid Protest Procedures, 4 C.F.R. Part 21 (1981), because the material submitted by the protester, when read in the light most favorable to the protester, affirmatively demonstrates that the protester is not entitled to relief. See Hawthorn Melody, Inc., B-190211, November 23, 1977, 77-2 CPD 406.

Contracts between the Government and its employees are not expressly prohibited by statute except where the employee acts for both the Government and the contractor in a particular transaction or where the service to be rendered is such as could be required of the contractor in his capacity as a Government employee. 18 U.S.C. § 208 (1976); Hugh Maher, B-187841, March 31, 1977, 77-1 CPD 204. However, it has long been recognized that such contracts are undesirable because among other reasons they invite criticism as to alleged favoritism and possible fraud and that they should be authorized only in exceptional cases where the Government cannot reasonably be otherwise supplied. 27 Comp. Gen. 735 (1948); Capital Aero, Inc., B-183833, September 30, 1975, 75-2 CPD 201; Burgos & Associates, Inc., 59 Comp. Gen. 273 (1980), 80-1 CPD 155. The fact that a service would be more expensive if not obtained from an employee of the Government does not by itself provide support for a determination that the service cannot reasonably be obtained from other sources. 55 Comp. Gen. 681 (1976).

Therefore, we see no basis for questioning the contracting officer's decision not to seek approval for an exception to the basic policy set forth in FPR § 1-1.302-3.

The protest is summarily denied.

for *Milton J. Acolan*
Comptroller General
of the United States